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2016 Election Law Reform Committee

Committee Report

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2016 Election Law Reform Committee

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Committee Report

The Secretary of State formed the Election Code Study Group of Legislators, Circuit Clerks, Election Commissioners, Political Parties, District Attorneys, and other interested citizens to review the Mississippi Election Code for potential updates and revisions. The Secretary of State's office led collective meetings of the Study Group from June through September to discuss current State election laws and determine which revisions or updates would promote security of the ballot, efficiency of the election system and transparency. Below is a synopsis of each article of the Election Code containing recommended revisions. These proposed revisions are to be presented to the Mississippi Legislature for consideration.

Article 1 – General. Article 1 was revised to allow the counties to allocate funds in the Election Support Fund for the provision of training election officials as well as acquiring, upgrading, or maintaining any other election related site or system. In addition, the Article now provides for paying poll managers to work in the Courthouse or Circuit Clerk's office during the Pre-Election voting period.

In various places throughout the Election Code, and beginning in Article 1, language was updated to account for technological advances and upgrades to the election process.

Article 3 – Voter Registration. The Study Group recommended allowing a voter who moves from one voting precinct to another, within the same municipality, to transfer registration until the day immediately preceding the date on which the county prepares its pollbooks for the election. Currently, this section restricts a voter's transfer to thirty (30) days prior to the election. A voter may vote in his or her new precinct by affidavit if the registration transfer occurs after the date the county has prepared the pollbooks.

Currently, the Election Code contains sections related to criminal penalties for various violations of State election laws. In order to efficiently and more easily identify criminal penalties for election violations, the Study Group suggested removing those sections from the Election Code and codifying them in Title 97 of the Mississippi Code along with other criminal provisions.

The Group also recommended changes to allow a county registrar to accept voter registration applications on the Monday immediately following a legal holiday, if the holiday falls on the Saturday immediately preceding the thirtieth (30th) day prior to a regularly scheduled primary or general election.

Article 3 was updated to require the county registrar to mail an applicant a voter registration card to the mailing address provided on his or her application.

Article 3 was revised to require the Municipal Clerk to provide updated geographic data compatible with SEMS to the county registrar within ten (10) days after approval of a change in corporate boundaries due to redistricting or annexation. Only a county official or election commissioner who has completed an annual training seminar provided by the Secretary of State pertaining to the implementation of new boundary lines in SEMS and received certification therefore may update municipal boundary information.

The Circuit Clerks will verify a mail-in application by matching the applicant's Mississippi driver's license number through the Mississippi Department of Public Safety ("DPS") or matching the applicant's social security number through the American Association of Motor Vehicle Administrators. The revision also requires the county registrar to attempt to notify the applicant of his or her application status within five (5) days of receipt of the application. Currently, a registrar is allowed twenty-five (25) days to notify.

Most notably, Article 3 joins twenty-six (26) other states, including Florida, Georgia, Louisiana, and South Carolina, to create provisions to allow for online voter registration. A person may register online if the person is:

- Eligible and qualified to vote under the Election Code; and
- Has a current and valid Mississippi driver's license or photo identification issued by DPS.

The Secretary of State is tasked with working in conjunction with DPS to provide a secure website to allow for the submission of voter registration applications and is allowed to establish the form of the online application by adoption of an administrative rule.

The website will allow a person to:

- Register as first-time voter in Mississippi; or
- Change his or her name, address or other information in his or her existing voter registration record.

Additionally, the website will verify the applicant provided a current and valid Mississippi driver's license or DPS issued photo identification card matching the number of the license or identification card on file with DPS. The website will also verify the name, date of birth, and citizenship of the State of Mississippi and United States of the applicant by matching the provided information with the DPS file. The applicable Circuit Clerk continues to be tasked with approving the person's application.

The online voter registration provisions also subject any person attempting to falsely register to the penalties provided for in Miss. Code Ann. 97-13-25 which includes a misdemeanor or a felony. The Secretary of State and DPS are also required to enter into a Memorandum of Understanding to provide for sharing information required to facilitate online voter registration requirements. This amendment insures more integrity in registering to vote, allows continued approval of voter registration by the Circuit Clerk, addresses voter roll mistakes, saves county and taxpayer time and mailing expenses.

The provisions of Article 3 related to the form of pollbook were revised to require county election commissioners to note in SEMS any person disqualified to vote because of death, conviction of a disenfranchising crime, or legal removal from the jurisdiction. The person's name must then be removed from SEMS, and subsequently the state's voter roll, and county's pollbooks.

The Study Group proposed the repeal of a provision in Article 3 authorizing a municipality to contract with county election commissioners to revise registration books and pollbooks because county election commissioners already have the authority to make revisions. Repealing the section prevents duplicative or conflicting information regarding county election commissioner duties and the benefits already conferred to municipalities.

Article 5 – Primary and General Elections. The Study Group proposed revisions to municipal primary elections, suggesting such elections move from the first Tuesday in May preceding the general municipal election to the first Tuesday in April preceding the general municipal election. The Study Group also suggested changing the date of a second primary election from the third Tuesday in May preceding the general municipal election to the fourth Tuesday in April preceding the general municipal election. This proposed change would provide additional time for municipal election officials in preparation and administration of primary, second primary, and general elections.

Revisions to Article 5 also provide language clarifying that candidates receiving a majority of votes in the primary election shall become the party nominee, as well as provisions for a second primary election if no candidate receives a majority in the first primary election. Language was also revised to change the date of the first primary in municipalities operating under a special or private charter from exactly four (4) weeks before the general election to the first Tuesday two (2) months before the general election, and the second primary from two (2) weeks after the first primary election to three (3) weeks after. A new section was added to Article 5 exempting municipalities operating under a special or private charter adopted before June 25, 1952 from the times for holding primary and general elections.

Language was added to Article 5 to codify times for holding elections for levee commissioners. Currently, the election of levee commissioners is solely provided for in Public Laws, dating back to 1928. Codification would provide stability and clarification for levee districts and candidates for commissioner.

Article 7 – Election Officials. Article 7 was revised to update the duties of the State Board of Election Commissioners. The revisions designate the Governor as Chairman, the Secretary of State as Secretary and tasked with maintaining minutes of all meetings and accepting service of process on behalf of the board. The duties of the State Board of Election Commissioners were revised to include:

- Ruling on candidate qualifications;
- Approving the state ballot for particular offices;
- Removing candidates' names from ballots for failing to comply with campaign finance filing requirements in prior election cycles; and,
- Adopting administrative rules and regulations as necessary to carry out its duties.

Provisions of Article 7 were amended to provide for staggered terms for county election commissioners. Furthermore beginning January 1, 2020, Election Commissioners may not be certified to hold office by the Secretary of State until he or she has successfully completed the elections seminar conducted and sponsored by the Secretary of State. Newly elected commissioners will be required to satisfactorily complete seminar course on elections provided at no charge by the Secretary of State before taking office.

Language in Article 7 was revised to clarify the process by which a county election commissioner may resign from office in order to qualify and become a candidate for another office.

Article 7 was updated to designate the Circuit Court Clerk as the county registrar unless the State Board of Election Commissioners finds the Circuit Clerk to be an improper person to register the names of the voters in the county.

Article 7 was updated to provide no more than six (6) additional poll managers may be appointed to serve in

each voting precinct. Current laws allows for three (3) poll managers for the first five hundred (500) registered voters and an additional three (3) for each five hundred (500) registered voters, the total of which is not to exceed a total of nine (9) poll managers in each precinct.

A new section was added to Article 7 to provide for a poll manager online training program. County election commissioners would be required to designate no more than two (2) poll managers per precinct to complete an online training program at least five (5) days prior to an election. The poll managers completing the training will be defined as "certified poll managers," entitling them to a "Certificate of Completion" from the Secretary of State's Office and twenty-five dollars (\$25.00) payable from the Help Mississippi Vote Fund as compensation for successful completion of the training and skills assessment. Every election after January 1, 2018, would require at least one (1) certified poll manager to be appointed by county election officials to work in each polling place in the county during the general election. The twenty-five dollar (\$25.00) compensation would no longer be provided for certified poll managers after January 1, 2020. One (1) certified poll manager would continue to be required to be appointed by county election officials to work in each polling place during each general election.

Article 7 was revised to require the poll manager designated by the election commissioners to receive the ballot box, pollbook, and any other election documents or materials by 6:00 A.M. on Election Day. The designated poll manager would be required to take the materials from the courthouse to the voting place on or before 6:00 A.M. on the morning of the election. The designated poll manager would be required to return the materials to the Courthouse immediately on the night of the election. Currently, the poll manager is allowed to return the materials the day after the election.

In response to the passage of Voter Identification laws in Mississippi, Article 7 was updated to require poll managers of each precinct to publicly post the acceptable forms of photo identification which may be presented in the polling place and the statutory penalty for an election official's failure to require each voter to present an acceptable form of photo identification.

Article 9 - Supervisor's Districts and Precincts. The suggested revisions clarify who has authority to enter new boundaries into SEMS – the clerk or other individual who has attended training provided by the Secretary of State. The proposed revision adds a State law requirement all precincts comply with the Americans with Disabilities Act, and limits authority to move precincts within sixty (60) days of an election.

Article 11 – Nominations. The suggested revisions to this article clarify deadlines for qualifying. If such deadline falls on a weekend or legal holiday, filing must be accomplished before 5:00 p.m. on the last business day preceding the qualifying deadline.

Language was revised to Article 11 to provide in primary elections, the candidates for nominee must file their notice of withdrawal with the secretary of the executive committee, Secretary of State, or Circuit Clerk with whom the candidate originally qualified. If the only candidate for a particular office in a party's primary election withdraws more than fifty-five (55) days before the election, a substitute may be named by that party and any other party registered with the Secretary of State who lacks a candidate for that office. No substitutions would be allowed if the vacancy occurs less than fifty-five (55) days before the election. If an incumbent is a candidate for the same office and he or she withdraws and the withdrawal is more than seventy (70) days before the election, the qualification period will re-open for seven (7) days for that particular office. If the candidate's withdrawal occurs less than seventy (70) days before the election, write in candidates will be allowed.

The State Board of Election Commissioners remains the authority for reviewing "legitimate non-political reasons" and approving party's ability to substitute. Clarity is provided for withdrawals for business conflicts. The revised language would now require that the conflict arose after the candidate qualified.

Article 13 – Ballots. The revisions to Article 13 would require primary election ballots to list each candidate, even if the race is unopposed, unless all races on the ballot are unopposed. The updated language reflects the specific order of statewide and legislative offices appearing on the ballot, but leaves countywide and county district offices to the discretion of the local officials. Nominees of the Democratic and Republican political parties shall be listed first, alphabetically by last name, followed by all other candidates for the office, also listed alphabetically by last name.

Article 15 – Voting Systems. Revisions were made to delete references to outdated lever and punch-card equipment, as well as to update language regarding Optical Mark Reading Equipment (OMR) and Direct Recording Equipment (DRE).

Language was added to require election officials using Optical Mark Reading Equipment (OMR) to print ballots in an amount of one hundred twenty-five percent (125%) "of the highest number of votes cast in a comparable primary election conducted by the same party in the preceding ten (10) years." Additionally, the number of ballots for general elections is reduced to sixty percent (60%). This replaces the previous requirement of printing ballots for seventy-five (75%) of the registered voters for both primary and general elections.

The Election Code would recognize election officials' authority to reduce the number of machines to not less than one-third (1/3) of all DRE machines for any elections, other than general or primary elections

Article 17 - Conduct of Elections. Polls are to be opened at seven o'clock (7:00 A.M.) and remain open until the last voter who is in line at seven o'clock (7:00 P.M.) has cast a ballot. When voters arrive at the precinct they would be asked to provide photo identification, and a poll manger should mark the elector as "voted."

Article 17 was updated to provide specific guidance for poll managers for processing curbside voters. In such cases, all individuals who are able will be asked to exit the motor vehicle while the voter casts his or her ballot.

Language in Article 17 was revised related to voter assistance in order to tighten prohibitions on not only employers, agents of employers or agents of a voter's union from providing assistance, but now, candidates as well as the spouse, parents or children of a candidate, or poll watchers would be prohibited from providing assistance.

Article 17 was revised to expressly prohibit cross-over voting in primary runoff elections.

Article 17 was updated to add provisions related to conduct requirements of poll watchers. Poll watchers would be required to have written credentials authorizing them to act and observe the election, through the counting of ballots, but may not interfere with the election process.

Language was added to Article 17 to provide in tie votes, county and municipal races may be decided by the toss of a coin or by a lot fairly and publicly drawn. This small change recognizes the validity of a coin toss for making

those decisions. State level and Legislative races resulting in a tie would be broken by each candidate selecting a sealed container from within a bag. The container holding the longer of two straws would designate the winner.

Article 19 - Absentee Voting Procedure and Pre-Election Day Voting. The revisions eliminate in-person absentee voting and consolidate many of the existing absentee reasons to simplify the process. Permanently and temporarily disabled voters, electors temporarily residing outside of the county, any member, family member or employee of the Mississippi Congressional Delegation, any person over the age of sixty-five (65), or parent, spouse or dependent of a person with a temporary or physical disability who is hospitalized outside of his or her county or more than fifty (50) miles from his or her residence will continue to be allowed to vote absentee. Requests made due to a temporary disability accompanied by a physician's statement would only be valid for the election requested, included any runoff. Other absentee exceptions were eliminated.

Article 19 contains a new Subarticle D which provides for Pre-Election Day Voting in Mississippi. The Pre-Election Day Voting period would begin twenty-one (21) days prior to the date of the election and ends at noon (12:00 P.M.) on the Saturday immediately before the election. Any registered voter would be allowed to vote at his or her Circuit Clerk's office (county courthouse) using the same procedures as on Election Day. The new language provides for poll watchers during the Pre-Election Day Voting period, and earlier revisions to the Election Code expand a county's ability to use funds from the Help Mississippi Vote Fund to pay for the poll managers needed for Pre-Election Day Voting. Pre-Election Day Voting would eliminate the need for in-person absentee voting, increase voter participation, lower the cost of elections, clean up voter rolls, reduce wait times for voting on election day and expedite election results.

Article 21 - President and Vice-President. These provisions are left unchanged.

Article 23 - Campaign Reporting. The article would be revised to require political committees to file a statement of organization within forty-eight (48) hours of receiving or spending in excess of \$200.00. Currently, the filing period is ten (10) days from receiving or spending funds, which can fall after the election.

Language was added to Article 23 to require the itemization of credit card and other similar payments on finance reports. This updated would provide for more transparent campaign finance reporting. The article was also revised to allow unopposed primary candidates to forgo filing a pre-election report.

The Secretary may fine political committees which refuse to file required organization documents. The Secretary would also be allowed to bring a mandamus action to require organizations or candidates to file required reports.

Article 23 was updated to relocate a provision prohibiting contributions from foreign nationals from the criminal code to the Election Code, as it provides no actual criminal penalty but only a prohibition against certain acts.

Article 25 - County Special Elections. The statute now deletes the authority to hold primary elections before a county special election to fill a vacancy, thus reducing the cost to the county and the taxpayers.

Article 27 – Regulation of Elections and Crimes. The revisions were made to assist district attorneys in prosecuting election crimes by placing all criminal issues in one location. Cross references are made in the Election Code where appropriate.

Article 27 was updated to address campaign materials. The article would clearly address electronic publications and clarify the requirements for identification on campaign materials. Language was added requiring all materials to indicate if it is approved by a candidate, identify the committee paying for the materials or identify the publisher responsible for creation of the materials. Electronic materials must contain a link which would comply with the requirements for printed materials. Most voting crimes will be a misdemeanor with a fine up to one thousand dollars (\$1,000.00) and incarceration for not more than one (1) year or a felony with a fine up to three thousand dollars (\$3,000.00) and incarceration for not more than two (2) years.

Article 29 – Election Contests. Language was added to Article 29 to simplify service of notice of ballot examination by allowing notice to be provided by delivering a copy personally to the candidate, or by two (2) of the following: leaving a copy at the candidates dwelling, leaving a copy at the candidates usual place of residence with a family member over sixteen (16) years of age, email or other electronic means, or by certified mail.

Article 31 – Judicial Offices. The Mississippi Court of Appeals is established in Miss. Code Ann. 9-4-1. Language was added to Article 31 to coordinate the election laws for the election of Judges of the Court of Appeals.

Article 33 – Member of Congress. Language in the article was revised to reflect Mississippi's current four (4) congressional districts.

Article 35 – Political Parties. The terminology in Article 35 was modernized to reflect changes made elsewhere in the Election Code. Article 35 would require political parties to update registration with the Secretary of State on an annual basis.

Article 37 – Presidential Preference Primary and Delegate Selection. Language was revised to provide for the moving of the presidential primary election to the first Tuesday in March, instead of the second Tuesday in March. The proposed change would bring Mississippi in line with surrounding states and increase the voice of Mississippians in the selection of nominees for President of the United States of America.